

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 225 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAK TRADING COMPANY

Versus

COLLECTOR

Appearance:

MR BA SURTI for Petitioner

MR VB GERANIA AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/09/98

ORAL JUDGEMENT

Heard learned Advocate appearing for the petitioner.

2. Looking to the facts and circumstances of the case, Rule requires to be issued and hence Rule. Learned AGP Mr.Gerania appearing for the respondents waives service of Rule. The matter is taken up for hearing by

the consent of the learned Advocates appearing for the parties.

3. Learned Advocate Mr.Surti appearing for the petitioner, before going to the merits of case, submits that the petitioner will be satisfied if the matter is remanded back to the State, i.e. the appellate authority, for reconsideration as the petitioner was not given a proper opportunity of being heard. According to Mr.Surti, the observations made by the Honourable Mr.Justice R.K.Abichandani, in the case of KIRAN OIL INDUSTRIES v. DISTRICT COLLECTOR, JAMNAGAR, reported in 1996 (2) GLR 127 if considered, then it can be held that the orders under challenge are erroneous. Remanding of this matter solely on this point would serve the purpose. I would like to refer to the relevant para no.3 of the above relied judgment which runs as under:

"It is evident from the impugned orders that the defences raised by the petitioner have not been considered by the concerned authorities. Under Sec.6B of the Essential Commodities Act, 1955, a reasonable opportunity of being heard is required to be given before making any order confiscating any essential commodity under Sec.6A of the Act. Such reasonable opportunity follows the show cause notice informing the person from whom the commodity is seized, of the grounds on which confiscation is proposed. It, therefore, follows that any material on which reliance is to be placed must be disclosed to the person on whom show cause notice is issued, to enable him to have an appropriate opportunity of being heard in the matter. It is also incumbent upon the authorities to look into the defence raised by the petitioner with a view to come to the conclusion whether confiscation would be justified or not. Therefore, where preliminary statements are recorded at the time of raid and thereafter, show cause notice is issued under Sec.6B, all that material which the authority may rely upon is to be again put to the person concerned to enable him to defend himself in the matter. In the present case, the concerned authorities have dealt with the matter rather casually and have not considered the defence raised by the petitioner before coming to the conclusion that the goods were required to be confiscated. The impugned orders are, therefore, set aside and the matter is remanded to the respondent for a fresh consideration in

accordance with law. Rule is made absolute accordingly with no order as to costs. The Bank guarantee which has been furnished by the petitioner shall be kept alive until further orders that may be made by the concerned authorities."

4. According to Mr.Surti, the Government or the State machinery who had initiated the action against the petitioner had not supplied all the documents including the panchnama, etc. with the show cause notice and the same should be supplied to the petitioner.

5. Learned AGP Mr.Gerania appearing for the State accepts the ratio of the above judgment (Kiran Oil Industries) and concedes that if the matter is remanded back to the concerned competent authority, would meet the ends of justice.

6. In view of the above submission and in view of the fact that the relevant documents were not supplied initially to the petitioner, the matter should be remanded back to the competent authority, i.e. the first authority - the Collector, who had served the show cause notice to the petitioner, for considering the disputes between the Inspecting authority and the petitioner, de-novo and without prejudice to the findings previously arrived at by him. The respondent Collector is directed to supply the necessary and relevant documents pertaining to the show cause notice issued by him within four weeks from the receipt of the writ of this Court and should decide the matter within three months thereafter. It is clarified that the petitioner shall have to be given an opportunity of being heard in person and or through lawyer. The petitioner undertakes to co-operate with the State machinery and shall not ask for unreasonable adjournments.

7. In view of the aforesaid observations and directions, the petition is allowed accordingly. The impugned orders under challenge are hereby quashed and set aside. Rule is made absolute accordingly. No costs.

Direct service is permitted.

sreeram.